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Prisoners Seeking Monetary Relief for Civil Rights Claims: Must They Exhaust Administrative Remedies Under § 1997e Before Filing a Claim in Federal Court?

Tracy M. Sullivan*

Consider two prisoners similarly situated: Wyatt and Whitley.¹ Wyatt is incarcerated in Ohio and Whitley is incarcerated in Texas. Both men file a civil rights action against prison employees seeking damages for violation of the Eighth Amendment.² Wyatt files his claim in a federal district court in Ohio seeking monetary damages. Whitley files his claim in a federal district court in Texas seeking monetary damages as well. Neither man pursued relief through his prison's administrative grievance procedure before filing his claim.³ Neither prison offers a monetary remedy among the possible reliefs to prisoners with successful claims. The court will require Wyatt to exhaust administrative remedies before filing a claim in federal court,⁴ while Whitley's claim will continue. Wyatt and Whitley are similarly situated, yet one federal court will hear Whitley's case, while another federal court will dismiss Wyatt's case. This incongruity is a result of divergent interpretations of a statute imposing a requirement on prisoners to exhaust all available administrative remedies before filing their civil rights claims in federal court.

* J.D., Washington University School of Law, 2001.

1. The prisoners' situations in this introduction are loosely based on *Wyatt v. Leonard*, 193 F.3d 876 (6th Cir. 1999) and *Whitley v. Hunt*, 158 F.3d 882 (5th Cir. 1998). These cases are discussed in Part III of this Note.

2. The Eighth Amendment prohibits "cruel and unusual punishments." U.S. CONST. amend. VIII.

3. In the actual case, Wyatt attempted to bring his matter to the attention of the appropriate official. *Wyatt*, 193 F.3d at 880. The court found that, by doing so, he "substantially complied with the exhaustion requirement." *Id.*

4. *Wyatt*, 193 F.3d at 878.

Section 1997e of Title 42 of the U.S. Code⁵ currently imposes a mandatory exhaustion requirement on prisoners who file civil rights lawsuits under 42 U.S.C. § 1983.⁶ A 1996 amendment to § 1997e inserted a mandatory exhaustion provision used today and spurred debate over whether prisoners who file civil rights lawsuits seeking only monetary relief are required to exhaust their administrative remedies.⁷ This debate involving various interpretations of § 1997e, resulted in a circuit split. The Third, Sixth, Seventh, and Eleventh Circuits have held that § 1997e applies even when prisoners seek monetary damages.⁸ The Fifth, Ninth, and Tenth Circuits found that § 1997e is not applicable when prisoners seek monetary damages.⁹ This Note supports the holding of the Third, Sixth, Seventh, and Eleventh Circuits: Mandatory exhaustion, regardless of the remedy sought, serves important purposes, conforms with the goals of the statute, and does not preclude prisoners from pursuing their claims in federal court. Thus, courts should apply this rule without exception.

Part I of this Note examines the history of the Prison Litigation Reform Act of 1996.¹⁰ Part II discusses the effect of the Prison Litigation Reform Act on 42 U.S.C. § 1997e's directive for

5. 42 U.S.C. § 1997e (Supp. II 1996). Part of this statute's text reads:

(a) Applicability of administrative remedies

No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.

Id.

6. 42 U.S.C. § 1983 (Supp. II 1996) states in part:

Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

7. Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. No. 104-134, 110 Stat. 1121 (1996).

8. See *infra* notes 65-114 and accompanying text.

9. See *infra* notes 36-64 and accompanying text.

10. See *infra* text accompanying notes 12-27.

exhaustion of administrative remedies. Part III reviews the case law interpreting § 1997e as it applies to prisoners' civil rights lawsuits and their requests for monetary relief. Finally, Part IV analyzes case law and the courts' struggle with competing goals and proposes that the requirement for exhausting administrative remedies should remain intact despite the prisoners' request for monetary relief.

I. HISTORY OF THE PRISON LITIGATION REFORM ACT

Prisoners often seek to remedy alleged violations of their civil rights through the judicial system by filing lawsuits under 42 U.S.C. § 1983 or as *Bivens* claims.¹¹ Many of these civil rights lawsuits have "revealed the substandard, often cruel and disgusting, nature of some prison facilities."¹² Despite legitimate claims, "federal and state courts have suffered a barrage of trivial and even ridiculous civil suits filed by prisoners complaining of 'unconstitutional' prison conditions."¹³ In fact, with the increase in the prison population over the years, lawsuits filed by prisoners nearly tripled in number between 1980 and 1996.¹⁴ Prisoner lawsuits constitute a significant percentage of suits filed in federal courts.¹⁵ Of the prisoner petitions

11. A *Bivens* claim is named after *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971). See Howard Jay Pollack, *In the Right Place at the Wrong Time: Should Federal Prisoners Be Required to Exhaust Their Administrative Remedies Prior to Bringing a Bivens-Type Claim in Federal Court?*, 42 SYRACUSE L. REV. 241, 241 n.2 (1991).

[*Bivens*] established that victims of constitutional violations sustained at the hands of federal officers have recourse for damages in federal court despite the absence of any statute specifically conferring such a right. *Bivens* is particularly significant because 42 U.S.C. § 1983 (1988) does not provide a private cause of action against federal officials for constitutional violations. That statute only provides remedy for constitutional torts committed "under color of state law."

Id.

12. Kristin L. Burns, *Return to Hard Time: The Prison Litigation Reform Act of 1995*, 31 GA. L. REV. 879, 880 (1997).

13. *Id.* at 881.

14. JOHN SCALIA, U.S. DEP'T OF JUSTICE, PRISONER PETITIONS IN THE FEDERAL COURTS, 1980-96 5 (1997). In 1980, 319,598 people were held in federal and state prisons. *Id.* By 1995, the prison population had grown to 1,078,545. During 1980, 23,230 federal and state inmates filed prisoner petitions in U.S. district courts. *Id.* In 1996, this number increased to 68,235 prisoner petitions. *Id.* at iii.

15. *Alexander v. Hawk*, 159 F.3d 1321, 1324 (11th Cir. 1998). "Indeed, by 1995 more than twenty-five percent of the suits filed in federal district court were brought by

filed in the federal courts, more than half allege civil rights violations.¹⁶

In hopes of easing the burden of prisoners' suits on the judicial system, President Bill Clinton signed the Prison Litigation Reform Act (PLRA) into law on April 26, 1996¹⁷ to amend 42 U.S.C. § 1997e and other statutes.¹⁸

The history associated with the enactment of the PLRA¹⁹ shows that judges, legal scholars, and practitioners²⁰ grew angry and

prisoners." *Id.*

16. SCALIA, *supra* note 14, at 1.

17. Prison Litigation Reform Act of 1995, Pub. L. No. 104-34, 110 Stat. 1321 (1996). The PLRA "was passed as Title VIII of the statute making fiscal 1996 appropriations for the Department of Commerce, Justice, and State; the judiciary; and related agencies." FED. JUDICIAL CTR., RESOURCE GUIDE FOR MANAGING PRISONER CIVIL RIGHTS LITIGATION WITH SPECIAL EMPHASIS ON THE PRISON LITIGATION REFORM ACT 1 (1996).

18. "The PLRA sets forth several provisions affecting the ability of prisoners to complain about prison conditions as well as the ability of federal judges to relieve conditions that violate prisoners' federal rights." Burns, *supra* note 12, at 882. In addition to amending 42 U.S.C. § 1997e, the PLRA amended 18 U.S.C. §§ 3624, 3626; 28 U.S.C. §§ 1915, 1346(b); and 11 U.S.C. § 523(a). FED. JUDICIAL CTR., *supra* note 17, at 1. "The Act adds provisions, including new sections 1915A and 1932, to title 28 of the U.S. Code and also generally changes the word 'he' to 'the prisoner.'" *Id.*

The pre-PLRA version of 42 U.S.C. § 1997e reads:

Exhaustion of remedies

(a) Applicability of administrative remedies

(1) Subject to the provisions of paragraph (2), in any action brought pursuant to section 1983 of this title by an adult convicted of a crime confined in any jail, prison or other correctional facility, the court shall, if the court believes that such a requirement would be appropriate and in the interests of justice, continue such case for a period of not [sic] to exceed 180 days in order to require exhaustion of such plain, speedy, and effective administrative remedies as are available.

(2) The exhaustion of administrative remedies under paragraph (1) may not be required unless the Attorney General has certified or the court has determined that such administrative remedies are in substantial compliance with the minimum acceptable standards promulgated under subsection (b) of this section or are otherwise fair and effective.

42 U.S.C. § 1997e (1994).

19. "Congress . . . did little to provide a comprehensive historical background for the PLRA; the Act itself was part of an omnibus appropriations bill, and its history consists of only one hearing before the Senate Judiciary Committee, one substantive House Report, and a few days' worth of floor debate." Burns, *supra* note 12, at 886-87.

20. Representatives for the Inmate Litigation Task Force of the National Association of Attorneys General (NAAG) wrote Senator Dole to express the organization's "strong support" for the PLRA: "We thank you for recognizing the importance of federal legislation to curb the epidemic of frivolous inmate litigation that is plaguing this country." 141 CONG. REC. 19, 26552-53 (1995); letter was signed by Frankie Sue Del Papa, Attorney General of Nevada,

concerned over the increasing numbers of prisoner civil rights lawsuits filed in federal court and “the high rate of frivolous and abusive lawsuits by inmates.”²¹ Proponents of the PLRA regarded many of the prisoner civil rights lawsuits as wasting judicial resources and depriving others of quality justice.²² In response to the “alarming explosion in the number of frivolous lawsuits filed by State and Federal Prisoners,”²³ Senator Bob Dole introduced the PLRA to the Senate in September 1995.²⁴ Senator Dole enumerated examples of frivolous lawsuits that clog the judicial system.²⁵ Senator Jon Kyl also spoke in support of the PLRA by explaining the burden of prisoners’ lawsuits.²⁶

Following the introduction, Senator Joseph Biden criticized the PLRA by recounting examples of how administrative remedies did

Chair; Daniel E. Lungren, Attorney General of California; Grant Woods, Attorney General of Arizona; Jeremiah W. Nixon, Attorney General of Missouri. *Id.* (reprinted in 19, 26553-53 (1995)).

21. Burns, *supra* note 12, at 889.

22. 141 CONG. REC. 19, 26548 (1995).

Frivolous lawsuits filed by prisoners tie up the courts, waste valuable legal resources, and affect the quality of justice enjoyed by law-abiding citizens. The time and money spent defending these cases are clearly time and money better spent prosecuting violent criminals, fighting illegal drugs, or cracking down on consumer fraud.

Id.

23. *Id.*

24. Senators Orrin Hatch, Jon Kyl, Spencer Abraham, Kay Bailey Hutchison, Harry Reid, Strom Thurmond, Arlen Specter, Rick Santorum, Alfonse D’Amato, Phil Gramm, and Christopher Bond joined Senator Dole in introducing the PLRA. *Id.* Later in 1995, Senators Hank Brown and John McCain joined as co-sponsors of the bill. 141 CONG. REC. 22, 31696 (1995); 141 CONG. REC. 24, 35288 (1995).

25. 141 CONG. REC. 19, 26548 (1995).

These suits can involve such grievances as insufficient storage locker space, a defective haircut by a prison barber, the failure of prison officials to invite a prisoner to a pizza party for a departing prison employee, and yes, being served chunky peanut butter instead of the creamy variety. The list goes on and on.

Id.

26. 141 CONG. REC. 19, 26553 (1995). Senator Kyl remarked:

Many people think of prison inmates as spending their free time in the weight room or the television lounge. But the most crowded place in today’s prisons may be the law library . . . These prisoners are victimizing society twice—first when they commit the crime that put them in prison, and second when they waste our hard-earned tax dollars while cases based on serious grievances languish on the court calendar.

Id.

not sufficiently resolve civil rights complaints.²⁷ This amendment and debate over its enactment raised questions as to the applicability of the exhaustion requirements when prisoners seek monetary relief for their civil rights claims.

II. THE EFFECT OF THE PRISON LITIGATION REFORM ACT ON 42 U.S.C. § 1997e'S DIRECTIVE ON EXHAUSTION OF REMEDIES

The PLRA requires that even if a prison facility's grievance procedures are not certified,²⁸ an inmate must exhaust all available administrative remedies before filing a civil rights action in federal court.²⁹ The revised 42 U.S.C. § 1997e(a) and (b) codified this provision of the PLRA.³⁰

27. 141 CONG. REC. 19, 22044 (1995). Sen. Biden remarked:

In one case, for example, children in a severely overcrowded juvenile detention center in Pennsylvania—a facility that was at 160 percent of capacity—were beaten by staff—sometimes with chains and other objects. These problems were not resolved until a court order was entered . . . [Santiago v. Philadelphia, 435 F. Supp. 136 (E.D. Pa. 1977)].

In a recent case right here in the District of Columbia, Judge June L. Green found that correctional officers had routinely sexually assaulted women prisoners—one had raped a woman prisoner, another had forced a prisoner to perform oral sex. When these conditions were reported to the D.C. correction officials, nothing was done. It was when the court entered an order that the district take steps to prevent these incidents from recurring that the prisoners were able to get relief. [Women Prisoners of Dist. of Columbia Dept. of Corr. v. District of Columbia, 899 F. Supp. 659 (D.D.C. 1995)].

Id.

28. The Department of Justice and local federal courts are entities that could certify the prison's grievance procedures. SCALIA, *supra* note 14, at 15.

29. SCALIA, *supra* note 14, at 15. The PLRA changed other aspects of prisoner lawsuits:

Frivolous, malicious, ill-founded suits could be dismissed without requiring exhaustion of administrative remedies; attorney fees were limited; an inmate seeking to proceed *in forma pauperis* (without funds, and therefore excused from paying filing fees or other court fees) would have to submit records showing the lack of funds in his prison account in order to avoid payment of fees; court orders for relief from prison conditions were strictly limited, to correct only the violation of rights shown by the particular plaintiff-inmate; consent decrees were limited in the scope of relief that could be ordered; and the use and authority of special masters in prison cases were limited.

CLAIR A. CRIPE, LEGAL ASPECTS OF CORRECTIONS MANAGEMENT 80 (1997).

30. 42 U.S.C. § 1997e(a)-(b) (Supp. II 1996).

Previously, the § 1997e gave courts discretion in choosing whether to require prisoners to exhaust administrative remedies.³¹ Additionally, the previous version only allowed courts to require the exhaustion of administrative remedies if either the Attorney General certified that the administrative remedies used met acceptable standards or if the court found an uncertified grievance system to “comply substantially” with the minimum acceptable standards promulgated under the previous version of § 1997e(b).³² With the current, post-PLRA version of 42 U.S.C. § 1997e, courts “no longer have the option to stay actions while prisoners exhaust such remedies, and there is no longer any requirement that either the Attorney General certify or the court find that those administrative remedies are acceptable.”³³ The Department of Justice developed minimum standards to “guide development of certifiable grievance procedures,”³⁴ which are set forth in the Code of Federal Regulations (CFR).³⁵

III. CASE LAW INTERPRETING § 1997e’S REQUIREMENT FOR EXHAUSTION OF ADMINISTRATIVE REMEDIES AS IT APPLIES TO PRISONERS’ REQUEST FOR MONETARY RELIEF IN THEIR CIVIL RIGHTS LAWSUITS

Even where states and penal institutions have a grievance procedure in place, some prisoners argue that they are exempt from the exhaustion requirement of 42 U.S.C. § 1997e because they seek monetary relief, which often is not among the remedies available from the prison grievance system. The circuit courts are divided over the question of whether a prisoner seeking only monetary damages

31. *Id.* § 1997e.

32. Donald P. Lay, *Exhaustion of Grievance Procedures for State Prisoners Under Section 1997e of the Civil Rights Act*, 71 IOWA L. REV. 935, 938-39 (1986).

33. FED. JUDICIAL CTR., *supra* note 17, at 34.

34. Lay, *supra* note 32, at 939-40.

35. Standards for Inmate Grievance Procedures, 28 C.F.R. § 40 (1999). The minimum standards for remedies are that “[t]he grievance procedure shall afford a successful grievant a meaningful remedy. Although available remedies may vary among institutions, a reasonable range of meaningful remedies in each institution is necessary.” *Id.* § 40.6. Yet, “[t]o determine the available administrative remedies, courts should consult the state statutes and regulations applicable to the prisoner litigant.” FED. JUDICIAL CTR., *supra* note 17, at 36.

must exhaust administrative remedies before filing a civil rights action in federal court. The Fifth, Ninth, and Tenth Circuits held that § 1997e does not apply when the prisoner seeks only monetary relief. In contrast, the Third, Sixth, Seventh, and Eleventh Circuits found that § 1997e applies even when the prisoner seeks only monetary relief.

A. The Fifth, Ninth, and Tenth Circuits: Exhaustion is Not Required When Prisoners Seek Only Monetary Damages and the Prison System Offers No Monetary Remedies

One of the first cases to address this issue was *Garrett v. Hawk*, which held that the exhaustion of administrative remedies was not required because the prisoner-plaintiff requested monetary relief.³⁶

Garrett filed a complaint against Hawk, the Director of the Federal Bureau of Prisons, and at least thirty correctional officers employed by the penitentiary where he was imprisoned.³⁷ Garrett appealed the district court's dismissal of his complaint on the ground that he failed to exhaust prison administrative remedies as required by § 1997e(a).³⁸ The Court of Appeals for the Tenth Circuit acknowledged that § 1997e makes exhaustion of administrative remedies mandatory, but found that a "prisoner can only exhaust administrative remedies that are actually available."³⁹ Because there was no administrative remedy in place that would provide monetary relief for Garrett, he had no *available* administrative remedy to exhaust.⁴⁰ As a result, the court reversed the district court's dismissal of Garrett's claim.⁴¹

36. 127 F.3d 1263, 1267 (10th Cir. 1997).

37. Garrett claimed that the defendants "exhibited deliberate indifference to his medical needs that arose from a head injury sustained during a recreation yard fistfight . . . and that the unnamed defendants used excessive force in responding to the melee" This resulted in a shoulder injury for which he was denied treatment for two months. *Id.* at 1264.

38. *Id.*

39. *Id.* at 1265, 1267. In reaching this finding, the court examined "whether Garrett had any administrative remedies available to him which he could have exhausted before proceeding with the present action." *Id.* at 1266. The government conceded that "if an inmate seeks purely monetary damages . . . the institution staff will reject the claim as constituting improper subject matter for administrative review" *Id.*

40. *Id.* at 1267.

41. *Id.*

A year after the Tenth Circuit decided *Garrett*, the Court of Appeals for the Fifth Circuit addressed the same issue.⁴² In *Whitley v. Hunt*, the prisoner-plaintiff filed suit against the Bureau of Prisons and three prison officials for monetary damages.⁴³ When a magistrate judge recommended dismissal for Whitley's claims because he failed to exhaust administrative remedies, Whitley objected, arguing that because he was bringing suit for monetary damages, he was not required to pursue administrative remedies.⁴⁴ The district court dismissed Whitley's claims and he appealed.⁴⁵

The Court of Appeals for the Fifth Circuit looked to the plain language of § 1997e, which "requires only the exhaustion of 'available' administrative remedies."⁴⁶ The court concluded that inclusion of the term "available" shows that Congress had no intention of requiring the exhaustion of remedies that are *not available*.⁴⁷ The court looked to its decision in *Underwood v. Wilson*⁴⁸ to examine what constitutes an available remedy.⁴⁹

Holding that there were no available administrative remedies capable of providing Whitley with monetary relief at the time he filed his complaint,⁵⁰ the court adopted the rule that "federal prisoners

42. *Whitley v. Hunt*, 158 F.3d 882, 884 (5th Cir. 1998). The court acknowledged in *Whitley* that the Tenth Circuit was, at that time, "the only Circuit to have directly addressed the issue" *Id.* at 886.

43. Whitley's claim alleged that the prison denied him medical care, discriminated against him, improperly changed his security classification, and retaliated against him for filing his claims. *Id.* at 884.

44. *Id.*

45. *Id.* at 883.

46. *Id.* at 886.

47. *Id.*

48. 151 F.3d 292 (5th Cir. 1998).

49. 158 F.3d at 886-87. In *Underwood*, the court looked to dictionary definitions for assistance in determining what remedies were available:

Webster's New International Dictionary defines "available" as "capable of availing; having sufficient power or force to achieve an end," "such as may be availed of: capable of use for the accomplishment of a purpose: immediately utilizable," and "that is accessible or may be obtained: personally obtainable."

Underwood, 151 F.3d at 295 (quoting WEBSTER'S NEW INT'L DICTIONARY 150 (3d ed. 1981)). "'Exhaust' is defined as 'to take complete advantage of (legal remedies).'" *Id.* (quoting WEBSTER'S NEW INT'L DICTIONARY 796 (3d ed. 1981)).

50. "Had he submitted a grievance seeking exclusively monetary relief, it is likely that the grievance would have been returned as improper subject matter for administrative review." *Whitley*, 158 F.3d at 887.

pressing *Bivens* claims against federal officials need not pursue prison remedies when they are seeking monetary relief, and there are no prison remedies capable of affording such relief.”⁵¹ The court noted that if Congress enacted regulations allowing successful prisoners to recover only monetary relief from individual prison officials, then it could read § 1997e to require exhaustion of those remedies prior to suit.⁵² Those remedies, however, did not exist in Whitley’s case; thus, the court declined to interpret § 1997e in a way that requires exhaustion of unavailable remedies.⁵³ Applying its newly adopted rule to Whitley’s claims, the court reversed dismissal of one claim, reasoning that he was not required to exhaust unavailable remedies.⁵⁴

In *Wright v. Hollingsworth*,⁵⁵ the Fifth Circuit questioned its *Whitley* holding⁵⁶ and reconsidered *Wright* en banc.⁵⁷ When deciding *Wright*, the Fifth Circuit noted that it was bound by *Whitley* and found that the district court abused its discretion in dismissing *Wright*’s claim for failure to exhaust administrative remedies.⁵⁸

51. *Id.*

52. *Id.*

53. *Id.*

54. The court reversed the district court’s dismissal of Whitley’s medical care claim against the three individual defendants. *Id.* The court affirmed the district court’s dismissal of Whitley’s other claims: his medical care claim against the Bureau of Prisons; his claim of discrimination against all defendants; his classification claims against all defendants; and his retaliation claims against all defendants, for reasons not related to the exhaustion requirement and its applicability to claims for monetary relief. *Id.*

55. 201 F.3d 663 (5th Cir. 2000).

56. “Because the proper handling of thousands of inmate grievances annually is of vital interest to both the states and the federal courts, and there are strong arguments that *Whitley* may have misinterpreted the PLRA, *en banc* reconsideration should be undertaken.” *Id.* at 664.

57. *Id.* at 666. The court recognized that *Whitley*’s interpretation of § 1997e(a) conflicts with the Sixth, Seventh and Eleventh Circuit Courts’ interpretation of § 1997e(a). *Id.* Therefore, the court urged an *en banc* reconsideration of its decision in *Whitley* “in order to reconcile this circuit’s interpretation of the exhaustion requirement of 42 U.S.C.A. § 1997e with the explicit language and policy of the Prison Litigation Reform Act” *Id.* at 664.

58. *Id.* at 665-66. The court stated that an inmate seeking only monetary relief need not exhaust administrative remedies when the prison’s grievance procedure did not permit monetary damages. *Id.* at 666. It urged the Court of Appeals for the Fifth Circuit to reconsider *Whitley v. Hunt en banc*. *Id.* at 664. The court said that without *en banc* reconsideration, the state would be foreclosed from briefing and arguing the PLRA’s approach to the exhaustion requirement in the PLRA. *Id.* at 666. The court further stated that when *Whitley* was decided, the panel:

Rumbles v. Hill is another recent circuit court decision holding that prisoners seeking monetary relief are not required to exhaust their administrative remedies when filing civil rights actions.⁵⁹ Rumbles brought a § 1983 action for monetary damages and for injunctive-type relief against Hill, a prison guard.⁶⁰ “The district court held that because California’s administrative prison grievance process does not allow for monetary damages, this form of relief does not constitute an ‘available’ remedy that must be exhausted before bringing a section 1983 action.”⁶¹ In affirming this conclusion, the Court of Appeals for the Ninth Circuit applied its decision in *Lunsford v. Jumao-As*.⁶² *Lunsford* held that prisoners with *Bivens* claims are not required to exhaust administrative remedies when all they seek is monetary relief and there are no administrative remedies capable of providing that relief.⁶³ The Ninth Circuit found it was logical to extend *Lunsford*’s reasoning in reference to *Bivens* actions to § 1983 actions.⁶⁴ Accordingly, the court affirmed the district court’s order denying Hill’s motion to dismiss.

did not have the benefit of the Eleventh Circuit’s subsequent, detailed analysis of the statutory changes to § 1997e occasioned by the PLRA or of two other circuit court decisions consistent with the Eleventh Circuit. Those cases advance strong arguments why requiring exhaustion of all administrative remedies (even if an inmate is seeking only monetary damages) is consistent with the changes made . . . by the PLRA, better implements the legislative purpose of the PLRA, and furthers the policies supporting exhaustion.

Id.

59. 182 F.3d 1064, 1070 (9th Cir. 1999).

60. *Id.* Rumbles alleged that Hill spit on him, called him racial epithets, and assaulted or threatened to assault him. *Id.* at 1066. As injunctive relief, Rumbles sought an apology from Hill and “a federal investigation into ‘new California laws that are stiffer on repeat offenders and [the] effect [of such laws] on the conduct of Correctional Officers.’ . . .” *Id.* The district court held that it was powerless to investigate the state laws’ effect on correctional officers and, furthermore, that it could not compel a party to apologize. *Id.* at 1066-67.

61. *Id.* at 1067.

62. 155 F.3d 1178 (9th Cir. 1998). In *Lunsford*, the prisoner sought monetary relief in a *Bivens* action against prison officials. *Id.* The court held that Lunsford was not required to exhaust administrative remedies before filing suit because the Bureau of Prisons’ grievance procedure did not provide for monetary relief, only injunctive relief. *Rumbles*, 182 F.3d at 1068-69.

63. *Id.* at 1069. “‘Actions under § 1983 and those under *Bivens* are identical save for the replacement of a state actor under § 1983 by a federal actor under *Bivens*.’” *Id.* (quoting *Van Strum v. Lawn*, 940 F.2d 406, 409 (9th Cir. 1991)).

64. *Id.*

B. The Third, Sixth, Seventh, and Eleventh Circuits: Prisoners Seeking Monetary Relief are Required to Exhaust Administrative Remedies

The Third, Sixth, Seventh, and Eleventh Circuits endorse the opposite side of the circuit split: they require prisoners to exhaust administrative remedies under the PLRA despite the fact that their claims are for monetary relief only.

Alexander v. Hawk involved a prisoner-plaintiff who brought a *Bivens* action against prison officials in Florida.⁶⁵ The Court of Appeals for the Eleventh Circuit affirmed the district court's dismissal of the prisoner's action stating as its reason for dismissal the prisoner's failure to exhaust administrative remedies as required by the PLRA.⁶⁶ The court recognized that the PLRA § 1997e(a) applies to both federal and state prisoners and proceeded to analyze the plaintiff's argument in support of his contention that he was not required to exhaust administrative remedies.⁶⁷ The plaintiff argued that because the Bureau of Prisons has no authority to award monetary damages, its remedies are "futile and inadequate" for his claim.⁶⁸ Based on that information, he asserted that there were no administrative remedies available for him to exhaust and that § 1997e(a) did not apply to his claims.⁶⁹ In response to the plaintiff's argument, the court first recalled its conclusion in *Irwin v. Hawk*,⁷⁰ in which it held that exhaustion is required even if such an action

65. 159 F.3d 1321 (11th Cir. 1998). Alexander, the prisoner-plaintiff, claimed that prison officials' enforcement of legislation restricting prisoners' access to magazines that are sexually explicit or feature nudity violates his First Amendment rights. *Id.* at 1322.

66. *Id.* at 1323.

67. *Id.* at 1324. The court noted that the pre-PLRA § 1997e(a) statute applied only to state prisoners because it addressed only § 1983 actions involving state action. *Id.* "However, the text of the current section 1997e(a) expressly provides that its exhaustion requirement applies to actions brought 'under section 1983 . . . or any other Federal law' [L]egislative history makes clear that Congress intended PLRA section 1997e(a) to apply to both state and federal prisoners." *Id.* at 1324.

68. *Id.* at 1325.

69. *Id.*

70. 40 F.3d 347 (11th Cir. 1994). In *Irwin*, the plaintiff sought not only monetary relief, but also injunctive relief. In deciding *Irwin*, the court relied on another case from earlier in 1994, *Caraballo-Sandoval v. Honsted*, 35 F.3d 521 (11th Cir. 1994), which held that the district court did not err when it "dismissed the prisoner's claim for failure to exhaust administrative remedies where the prisoner sought both monetary and injunctive relief." 159 F.3d at 1325.

appears futile.⁷¹ Next, the court emphasized that Plaintiff's argument of futility and inadequacy did not withstand the mandatory exhaustion requirement of the PLRA.⁷²

The court addressed the plaintiff's argument that despite the mandatory exhaustion requirement, there is no adequate remedy and thus no available remedy because the Bureau of Prisons is unable to award monetary damages.⁷³ The court distinguished the PLRA phrase "administrative remedies as are available" from "an adequate administrative remedy"⁷⁴ and found that requiring Plaintiff to exhaust

71. *Irwin*, 40 F.3d at 349.

No doubt denial is the likeliest outcome but that is not [a] sufficient reason for waiving the requirement of exhaustion. Lightning [sic] may strike: and even if it doesn't, in denying relief the Bureau may give a statement of its reasons that is helpful to the district court in considering the merits of the claim.

159 F.3d at 1325 (quoting *Greene v. Meese*, 875 F.2d 539, 641 (7th Cir. 1989)).

72. *Id.* at 1325. "Since exhaustion is now a pre-condition to suit, the courts cannot simply waive those requirements where they determine they are futile or inadequate. Such an interpretation would impose an enormous loophole in the PLRA, which Congress clearly did not intend." *Id.* at 1326. The court stated that a judicial conclusion that the requirement of exhaustion need not apply does not satisfy the mandate of exhaustion. *Id.* The court cites *Weinberger v. Salfi*, 422 U.S. 749, 766 (1975) which holds that "where exhaustion is a statutorily specified jurisdictional prerequisite, 'the requirement . . . may not be dispensed merely by a judicial conclusion of futility'." *Id.*

73. *Id.*

74. 159 F.3d at 1326-27. The three reasons the court offered were:

(1) in contrast to the pre-PLRA statute, the current § 1997e(a) does not

condition the exhaustion requirement on the administrative remedies being "*plain, speedy, and effective*." Instead, section 1997e(a) merely provides for exhaustion of "such administrative remedies as are available." . . . The removal of the qualifiers "plain, speedy and effective" from the PLRA's mandatory exhaustion requirement indicates that Congress no longer wanted courts to examine the effectiveness of administrative remedies but rather to focus solely on whether an administrative remedy program is "available" in the prison involved.

Id. at 1326.

(2) the court found that the term "available" in section 1997e(a) "is used to acknowledge that not all prisons actually have administrative remedy programs. Some state penal institutions may not have an administrative remedy program to address prison conditions, and thus there are no 'available' administrative remedies to exhaust . . . However, here, the BOP has an available administrative remedy program."

Id. at 1326-27.

(3) other court decisions cited in *Alexander* that did not require a prisoner to pursue administrative remedies when the court determined that there was no adequate remedy available did not persuade the Court of Appeals for the Eleventh Circuit court here. "None

available administrative remedies would serve policies favoring exhaustion.⁷⁵ For example, during the administrative grievance process, the Bureau of Prisons could review its actions, correct any mistakes, and put a stop to any infringing practice.⁷⁶ A further benefit was the opportunity for the Bureau of Prisons to document information such as its justifications for the implementation of restrictions and regulations that the prisoner opposes.⁷⁷ In its conclusion, the court affirmed the district court's dismissal of plaintiff's complaint on the grounds that he failed to exhaust administrative remedies as required by the PLRA § 1997e(a).⁷⁸

of these cases discusses Congress's removal of the pre-PLRA condition that available remedies be 'plain, speedy, and effective' from section 1997e(a) . . . Since both the plain language and the legislative history of the PLRA support the result here, we decline to follow these decisions.

Id. at 1327.

75. *Id.* Mandatory exhaustion of a prison's administrative remedies is favorable for several policy reasons; the court in *Kobleur v. Group Hospitalization & Medical Services, Inc.*, 954 F.2d 705 (11th Cir. 1992) set out the following seven policy reasons:

1) to avoid premature interruption of the administrative process; 2) to let the agency develop the necessary factual background upon which decisions should be based; 3) to permit the agency to exercise its discretion or apply its expertise; 4) to improve the efficiency of the administrative process; 5) to conserve the scarce judicial resources, since the complaining party may be successful in vindicating rights in the administrative process and the courts may never have to intervene; 6) to give the agency a chance to discover and correct its own errors; and 7) to avoid the possibility that "frequent and deliberate flouting of the administrative processes could weaken the effectiveness of an agency by encouraging people to ignore its procedures."

Alexander, 159 F.3d at 1327 (quoting *Kobleur*, 954 F.2d at 712 (citations omitted)).

76. *Id.* at 1327. Being in a position to evaluate its actions and to stop any infringing actions gives the Bureau of Prisons the power to "freeze[] the time frame for the prisoner's damages." *Id.*

77. *Id.* at 1327-28.

Even if the BOP did not grant relief, a prisoner's resort to the administrative process is not futile, but allows grievances to be heard and a record to be created for review in any subsequent proceedings. Courts not only conserve time and effort as a result of any factfinding during the . . . proceedings, but also benefit from the BOP's expertise in interpreting its own regulations and applying them to the facts before it.

Id.

78. *Id.* at 1328. A year after the decision in *Alexander*, the Court of Appeals for the Eleventh Circuit held that the prisoner did not fail to exhaust his remedies by failing to appeal after the prison told him "unequivocally that appeal of an institution-level denial was precluded." *Miller v. Tanner*, 196 F.3d 1190, 1194 (11th Cir. 1999). "The memorandum that Miller received . . . denying his grievance at the institutional level stated '[w]hen any grievance is terminated at the institutional level you do not have the right to appeal. The above listed

Several months later, the Court of Appeals for the Sixth Circuit addressed the applicability of the mandatory exhaustion requirement of § 1997e(a) to a prisoner's claim for monetary relief in *Wyatt v. Leonard*.⁷⁹ In *Wyatt*, prisoner-plaintiff appealed the dismissal of his civil rights action for failure to exhaust administrative remedies.⁸⁰ The court acknowledged that the principal issue in the case was whether prisoners must exhaust administrative remedies in actions for damages in order to comply with § 1997e(a) of the PLRA even when the state's administrative process does not provide for recovery of damages.⁸¹ The court held that prisoners must exhaust administrative remedies even when they seek only monetary damages.⁸²

The court acknowledged the circuit split and set forth its reasons why it found that prisoners must exhaust administrative remedies.⁸³ The court emphasized the importance of administrative review of prisoners' complaints in allowing the prison administrators an opportunity to correct legitimate complaints.⁸⁴ The court also

grievance(s) is closed.”” *Id.*

79. 193 F.3d 876 (6th Cir. 1999).

80. *Id.* at 877. Plaintiff, Wyatt, filed a “§ 1983 civil rights action against prison employees seeking damages for cruel and unusual punishment in violation of the Eighth Amendment” because he was raped by another inmate. *Id.* He also alleged that the prison employees “provided inadequate medical and psychological care after the rape.” *Id.*

81. *Id.* at 877-78.

82. *Id.* at 879. This rule applies “if the prison system does not altogether refuse to review the prisoner's allegations on which the claim is based.” *Id.*

83. *Id.* at 878.

Two circuits have held in *Bivens*-type actions by federal prisoners that exhaustion in money damages cases is unnecessary because federal prison regulations do not allow for administrative review at all if the federal prisoner seeks damages. *Whitley v. Hunt*, 158 F.3d 882 (5th Cir. 1998); *Garrett v. Hawk*, 127 F.3d 1263 (10th Cir. 1997). On the other hand, the Court of Appeals for the Eleventh Circuit has held that even where the federal prison system denies review in such money damages cases, the federal prisoner must still attempt to have his complaint reviewed. *Alexander v. Hawk*, 159 F.3d 1321, 1325 (11th Cir. 1998).

Id.

84. *Id.*

Although it makes sense to excuse exhaustion of the prisoner's complaints where the prison system has a flat rule declining jurisdiction over such cases, it does not make sense to excuse the failure to exhaust when the prison system will hear the case and attempt to correct legitimate complaints by providing some remedy, even though it will not pay damages.

Id.

enumerated three reasons why the prisoner must exhaust administrative remedies. First, without mandatory exhaustion, prisoners easily could bypass the administrative process by simply requesting monetary relief, “a loophole the [PLRA] does not appear to allow.”⁸⁵ Allowing prisoners to bypass the administrative process when seeking relief for their actions would counter one of PLRA’s purposes: to give prisons notice of complaints, give them the chance to respond to such complaints, and prevent injuries of the same sort from happening again.⁸⁶ Second, prisoners who could avoid the exhaustion mandate of § 1997e(a) by asking for monetary damages would undermine the PLRA’s purpose of deterring frivolous lawsuits.⁸⁷ Third, records of the administrative review process are helpful to federal courts “in weeding out the frivolous prisoner cases from the ones that may have merit so that they can concentrate on the latter.”⁸⁸

The above reasons and the plain language of § 1997e(a) of the PLRA caused the Court of Appeals for the Sixth Circuit to hold that prisoners must exhaust administrative remedies even when they seek only monetary damages.⁸⁹ In this plaintiff’s case, however, the court held that inmate Wyatt had “substantially complied” with exhaustion requirements and remanded the case for reinstatement of his complaint.⁹⁰

Shortly after deciding *Wyatt*,⁹¹ the Court of Appeals for the Sixth Circuit held strongly to its position on prisoner exhaustion in *Lavista v. Beeler*.⁹² After finding that the plain language of the amended

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.* at 880.

90. *Id.* The Court of Appeals for the Sixth Circuit said that while Wyatt “did not follow precisely the requisite procedures for bringing his complaint to the attention of the appropriate person, he has substantially complied with the exhaustion requirement by giving written notice on several occasions to prison officials.” *Id.*

91. *Wyatt v. Leonard* was argued on August 12, 1999 and was decided and filed on October 6, 1999. *Lavista v. Beeler* was submitted on August 12, 1999 and was decided and filed on October 26, 1999.

92. 195 F.3d 254 (1999). *Lavista*, a federal inmate, brought claims pursuant to, *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388, among others, the Americans with Disabilities Act, the Rehabilitation Act of 1973, and the First, Fifth, Sixth,

§ 1997e(a) and the legislative history both indicate that all prisoners, including federal prisoners like Lavista, are required to exhaust available administrative remedies before bringing a *Bivens* claim to federal court, the court addressed the plaintiff's contention that he had no available remedy to exhaust because the Bureau of Prisons was not able to award monetary damages.⁹³ The court explained that excusing a prisoner from the exhaustion requirement would be inefficient because a prison system would willingly hear the prisoner's complaints and attempt to solve problems associated with the complaints, even if the system was unable to provide monetary damages.⁹⁴ Because the plaintiff had not exhausted his administrative remedies before filing suit in federal court, the court affirmed the district court's dismissal of the case.⁹⁵

Citing both *Wyatt v. Leonard* and *Lavista v. Beeler*, the Court of Appeals for the Sixth Circuit again reaffirmed its stance on the issue of § 1997e(a)'s exhaustion requirement for a prisoner seeking

Eighth and Fourteenth Amendments of the United States Constitution. *Id.* at 255. Lavista alleged a number of claims, including denial of medical care, sexual harassment and sexual assault, destruction of personal property, and retaliation during his incarceration. *Id.* He appealed the district court's dismissal of his case for failure to exhaust administrative remedies pursuant to § 1997e(a) of the PLRA. *Id.*

93. *Id.* at 256. Lavista relied on *McCarthy v. Madigan*, 503 U.S. 140 (1992), which held that:

federal prisoners bringing a *Bivens* action that sought only money damages were not required to exhaust the Bureau of Prisons grievance procedure . . . *McCarthy* recognized that when Congress specifically mandates exhaustion, it is required and the courts may not excuse the requirement. With the passage of the Reform Act, Congress has now specifically mandated the exhaustion of remedies through the prison grievance system. Even before passage of the Reform Act, this Court held that federal prisoners seeking injunctive relief must exhaust administrative remedies before coming to federal court, even if the prisoner also asserts a claim for monetary damages.

Id. at 256-57. The Court found *McCarthy* no longer controlling because of the PLRA amendments. *Id.*

94. *Id.* at 257.

Although it may make sense to excuse exhaustion of the prisoner's complaint where the prison system has a flat rule declining jurisdiction over such cases, it does not make sense to excuse the failure to exhaust when the prison system will hear the case and attempt to correct legitimate complaints, even though it will not pay damages.

Id.

95. *Id.* at 258.

monetary relief when it decided *Freeman v. Francis*.⁹⁶ The *Freeman* court addressed several aspects of § 1997e(a)'s exhaustion requirement. For example, when evaluating the applicability of the statute to the prisoner's claim and how it relates to his request for monetary damages, the court deferred to its explanations of the issue in its previous opinions and instructed that, on remand, the district court dismiss the plaintiff's case for failure to exhaust administrative remedies.⁹⁷

The Court of Appeals for the Seventh Circuit conducted its own analysis as to whether the court might require a prisoner to exhaust available administrative remedies when the relief sought is not available through the administrative grievance procedure in *Massey v. Helman*.⁹⁸ In *Massey*, the court held that when a prison has an internal administrative grievance procedure where prisoners can make complaints about prison conditions, "§ 1997e(a) requires inmates to exhaust those procedures before bringing a prison conditions claim" under 42 U.S.C. § 1983.⁹⁹ The court noted that § 1997e(a) does not contain a conditional component that the applicability of the statute depends on the *effectiveness* of the administrative remedy available.¹⁰⁰ Rather, the exhaustion requirement is met so long as the prison has some sort of administrative grievance system in place.¹⁰¹ The statute does not require the prison to have in place the prisoner's *preferred* remedy, just an *available* remedy.¹⁰² The court agreed with the analysis in

96. 196 F.3d 641, 645 (6th Cir. 1999).

97. *Id.* at 645. "As we explained . . . it does not make sense to excuse the failure to exhaust when the prison system will hear the case and attempt to correct legitimate complaints, even though it will not pay damages." *Id.* at 643. The Court of Appeals for the Sixth Circuit repeated this statement in an unpublished opinion. *See Clark v. Beebe*, No. 98-1430, 1999 WL 993979, at *1 (6th Cir. Oct. 21, 1999); 198 F.3d 244 (6th Cir. 1999); *Freeman*, 196 F.3d at 645.

98. 196 F.3d 727, 732-33 (7th Cir. 1999).

99. *Id.* at 734.

100. *Id.* at 733.

101. *Id.* "[I]f a prison has an internal administrative grievance system through which a prisoner can seek to correct a problem, then the prisoner must utilize that administrative system before filing a claim under § 1983." *Id.*

102. *Id.* (citing *Perez v. Wis. Dep't of Corr.*, 182 F.2d 532, 537 (9th Cir. 1999) (emphasis added)). "The potential effectiveness of an administrative response bears no relationship to the statutory requirement that prisoners first attempt to obtain relief through administrative procedures . . . [W]hether the administrative process actually produces a result that satisfies the inmate is not the appropriate inquiry." 196 F.3d at 733.

Alexander v. Hawk,¹⁰³ concluding that the presence of the term “available” in § 1997e(a) acknowledges that some prisons actually do not have administrative remedy programs.¹⁰⁴ Therefore, the court found that the prisoner must exhaust his administrative remedies before filing his § 1983 claim.¹⁰⁵

The plaintiffs in *Massey v. Helman* along with several other inmates, brought similar and additional claims in another case filed in a district court in Illinois.¹⁰⁶ The second case, also titled *Massey v. Helman*, referred to the Court of Appeals for the Seventh Circuit case as “*Massey I.*”¹⁰⁷ *Massey II* cites to *Massey I* to declare the rule “that

103. 159 F.3d 1321 (11th Cir. 1998).

104. 196 F.3d at 734; *see supra* note 81 and accompanying text.

105. *Id.* at 734-35. Massey argued that he is identical to an imaginary prisoner hypothesized by Judge Easterbrook in a previous Seventh Circuit case, *Perez v. Wisconsin Department of Corrections*. *Id.* at 734 (quoting *Perez*, 182 F.3d at 538). In the hypothetical, a prisoner breaks his leg, claims that prisoner officials delayed setting the bone, and later, after the injury has healed, brings suit for cruel and unusual punishment. *Id.* (quoting *Perez*, 182 F.3d at 538). Judge Easterbrook remarked, “If the injury has healed by the time suit begins, nothing other than damages could be a ‘remedy,’ and if the administrative process cannot provide compensation then there is no administrative remedy to exhaust.” *Id.* (quoting *Perez*, 182 F.3d at 538). Massey argued that because his hernia injury had been repaired, only money could serve as a remedy for him. *Id.* He argued that there was no administrative remedy to exhaust because monetary damages were not available through his prison’s grievance system. *Id.* The Court of Appeals for the Seventh Circuit responded to Massey’s argument by saying:

In contrast to the imaginary prisoner in *Perez* for whom *only* money would serve as a remedy, Massey could have availed himself of administrative remedies that may have resulted in the surgical repair of his hernia before he filed suit. Because Massey’s physical ailment lingered long past the date he filed his lawsuit, the dicta in *Perez* does not relieve him of his obligation to exhaust his administrative remedies before bringing his [§ 1983] claim.

Id. The court did not speculate what its decision would have been had Massey brought suit after his injury had healed.

106. *Massey v. Helman*, 78 F. Supp. 2d 806, 808 (C.D. Ill., 1999).

107. *Id.* “Despite the dismissal of *Massey I*, Massey and Otten, along with 13 inmates . . . bring this 62 page amended complaint, containing many of the very same allegations as those asserted in *Massey I.*” *Id.*

In *Massey II*, the district court heard arguments from the plaintiffs alleging that no monetary damages were available from the Bureau of Prison’s grievance system and, therefore, the court should not require them to exhaust all available administrative remedies before bringing their suit to federal court. *Id.* at 809. Plaintiffs also argued that the Seventh Circuit would reject the case of *Alexander v. Hawk* because, as the plaintiffs argued, the Eleventh Circuit wrongly decided the case. *Id.* The Seventh Circuit, however, did not reject *Alexander v. Hawk* in its decision in *Massey I*. *See Massey*, 196 F.3d at 734. In *Massey II*, the court stated, “Plaintiffs’ prediction was not a prescient one and the future did not turn out as Plaintiffs hoped. In *Perez v. Wisconsin Department of Corrections*, the Seventh Circuit agreed with the Eleventh

a prisoner must allege that he has exhausted administrative remedies, not that exhaustion would fail to provide money damages or other specific relief he seeks.”¹⁰⁸

The Court of Appeals for the Third Circuit is the latest circuit to decide the issue of whether prisoners seeking only monetary damages must exhaust administrative remedies when there are no monetary damages available. In *Nyhuis v. Reno*,¹⁰⁹ the court held that a prisoner must exhaust administrative remedies, even if the administrative procedure could not have provided monetary or declaratory relief.¹¹⁰ The court also held that “the PLRA . . . precludes a futility exception to its mandatory exhaustion requirement.”¹¹¹ Advancing four reasons why the futility exception does not apply in *Nyhuis* or in *any* case,¹¹²

Circuit’s interpretation of the term ‘available’ in the PLRA.” 78 F. Supp. at 809 (internal citation omitted).

108. See *Massey*, 79 F. Supp. 2d at 810. The court held:

Massey and the inmates cannot meet their obligation to plead exhaustion by alleging that exhaustion is not required due to the unavailability of BOP remedies that the inmates consider to be more pleasing or complete. Thus, because the inmates have failed to allege exhaustion of administrative remedies, their claims must be dismissed for failure to state a claim.

Id. at 810-11.

109. 204 F.3d 65 (3d Cir. 2000).

110. *Id.* at 78. Nyhuis brought a *Bivens* action alleging violations of his property rights. *Id.* at 66. He sought monetary, declaratory, and injunctive relief without exhausting the administrative procedures in place at the prison where he was incarcerated. *Id.* He argued that he did not pursue administrative remedies because exhaustion would be futile “since the Bureau of Prisons’ administrative process could not afford the monetary or declaratory relief he requested.” *Id.* at 67-68.

111. *Id.* at 71.

112. *Id.* at 71. The court first looked to the plain language of the statute to find that Congress’s amendment of the statute makes it clear that the statute requires exhaustion without exception. *Id.* at 72. It also rejected the Court of Appeals for the Fifth Circuit’s argument in *Whitley* over the definition of the word “available.” *Id.* at 72-73.

Second, the court discussed Congress’s intent in its passage of the PLRA to support its interpretation of § 1997e(a). *Id.* at 73-74. The court noted that allowing exceptions to the exhaustion requirement when a prisoner seeks only monetary relief would frustrate the aim of the PLRA to deter frivolous lawsuits. *Id.*

Third, the court emphasized the importance of administrative review in saving the courts from spending countless hours, educating themselves in every case, as to the vagaries of prison administrative processes, state or federal. An interpretation of § 1997e(a) that conditioned exhaustion on whether an administrative scheme grants the relief requested would have the effect of making the application of § 1997e(a) dependent upon the peculiarities of such processes. Such an interpretation would involve federal

the court rejected the plaintiff's arguments and affirmed the district court's dismissal of his case.¹¹³ The court observed that applying the exhaustion requirement without exception could eventually lead to the development of "a cooperative ethos . . . between inmate and jailer," which, in turn, could lead to an administrative process that is not as hostile or adversarial as a federal court.¹¹⁴

IV. THE EXHAUSTION REQUIREMENT SHOULD APPLY TO ALL REQUESTS FOR MONETARY RELIEF IN PRISONERS' CIVIL RIGHTS ACTIONS

The recent *Nyhuis v. Reno* decision leaves four circuits that have not currently addressed the issue concerning the § 1997e exhaustion mandate on prisoners who seek only monetary relief when the prisoners are in a system that cannot provide monetary damages through administrative grievance procedures. District courts within these four circuits that have addressed the exhaustion issue do not unanimously agree that the exhaustion requirement of the PLRA must apply where the prisoner was pursuing only monetary damages

courts in the tedious and intrusive process of evaluating each prisoner's cause of action and the underlying administrative scheme in each prison—something Congress was plainly guarding against when it enacted the PLRA.

Id. at 74. The court adopted a bright-line rule that:

makes things clear for inmates and insures that our time is saved for more important matters, as Congress intended. Our bright line rule is that inmate-plaintiffs must exhaust all available administrative remedies. Under such an approach, federal courts need not waste their time evaluating whether those remedies provide the federal prisoner with the relief he desires.

Id. at 75 (citation omitted).

Finally, the court argued that its holding is supported by the policies underlying exhaustion requirements. *Id.* The court described three such policies:

(1) avoiding premature interruption of the administrative process and giving the agency a chance to discover and correct its own errors; (2) conserving scarce judicial resources, since the complaining party may be successful in vindicating his rights in the administrative process and the courts may never have to intervene; and (3) improving the efficacy of the administrative process.

Id. Additionally, the court noted that "[a]n across-the-board exhaustion requirement also promotes judicial efficiency" and "the efficacy of the administrative process itself." *Id.* at 76.

113. *Id.* at 66-67.

114. *Id.* at 77.

and the prison grievance procedure did not provide for monetary relief.¹¹⁵ Therefore, if those circuits eventually address the issue, they will do so without the guidance of a clear preference among their district courts.

The circuit courts agreed, even before the enactment of the PLRA, that when prisoners seek both injunctive and monetary relief, the prisoners must meet the exhaustion requirement before bringing suit in federal court.¹¹⁶ The reason for this policy is that the prison administration is ideally situated to grant injunctive relief for prisoners' complaints.¹¹⁷ A debate arises when a plaintiff who asserts claims for both injunctive and monetary relief is compared to the plaintiff who brings a similar claim for only monetary damages. The question is whether it is fair to require the former plaintiff to exhaust administrative remedies while allowing the latter plaintiff to bypass the exhaustion requirement and bring his claim immediately to federal court.¹¹⁸ Under § 1997e, there is tension between easing the courts' burden from prisoner suits and requiring prisoners to exhaust administrative remedies that may not be adequate. As the courts that faced the issue of prisoner exhaustion of available administrative remedies have noted, however, the language of § 1997e(a) indicates neither a quality standard for remedies nor that the remedies be adequate.¹¹⁹ Courts debate over what constitutes "available." Some

115. See, e.g., *Hall v. McCoy*, 89 F. Supp.2d 742, 747 (W.D. Va. 2000) (noting that the Fourth Circuit has not considered this issue, the court dismissed case after plaintiff seeking only monetary damages failed to exhaust his administrative remedies pursuant to § 1997e(a)); *Cruz v. Jordan*, 80 F. Supp.2d 109, 119 (S.D.N.Y. 1999) (staying an action pending exhaustion of available administrative remedies stating "[t]here is much to be gained by requiring a plaintiff to exhaust available administrative procedures even where the remedies provided by those procedures are not identical with the remedies sought in a judicial proceeding."), *reconsidered in Cruz v. Jordan*, 80 F. Supp.2d 109 (S.D.N.Y. 1999) (deciding that the administrative remedies offered could serve no practical purpose for the plaintiff and, therefore, were not "available" administrative remedy under the PLRA and prisoner's case may proceed); *Murphy v. Magnusson*, No. CIV.98-439-P-C, 1999 WL 615895 at *2 (D.Me.) (plaintiff seeking monetary, injunctive and declaratory relief must exhaust administrative procedures); *Beeson v. Fishkill Corr. Facility*, 28 F. Supp.2d 884, 896 (S.D.N.Y. 1998) ("Congress, in enacting the PLRA, applied the exhaustion requirement to all actions brought by prisoners with respect to prison conditions . . . regardless of what relief is sought.").

116. Pollack, *supra* note 11, at 256.

117. *Id.* at 256.

118. *Id.* at 256-57.

119. Again, all that the language of § 1997e(a) indicates is ". . . until such administrative

opinions hold that the inability to give prisoners monetary relief does not qualify as an available remedy for purposes of § 1997e.¹²⁰ Other opinions hold that the inability to give prisoners monetary relief does not interfere with a requirement that prisoners must exhaust the administrative remedies that *are* available.¹²¹ The circuits that agree with the latter viewpoint examine the important policy reasons that underlie the exhaustion doctrine.

Policy reasons for requiring the exhaustion doctrine were neatly presented in *Wyatt v. Leonard*.¹²² First, without an exhaustion doctrine for prison condition cases seeking monetary relief, prisoners who wanted to avoid the administrative process could simply ask for damages.¹²³ This is not a scenario that § 1997e(a) appears to allow. Second, the purpose of the PLRA is to deter frivolous lawsuits.¹²⁴ If a prisoner can take a frivolous lawsuit directly to federal court by asking only for monetary damages, then the purpose of the PLRA is undermined.¹²⁵ Additionally, requiring a prisoner with a prison conditions complaint to work through the available administrative remedies prompts administrators to review the conditions and the

remedies as are *available* are exhausted.” 42 U.S.C. § 1997e(a) (Supp. II 1996) (emphasis added).

120. For a general discussion of particular cases, see *supra* Part III.

121. For a general discussion of particular cases, see *supra* Part III.

122. *Wyatt*, 193 F.3d at 878-79. An administrative grievance procedure is beneficial in a number of ways:

It alerts staff to problem areas in the institution. It spotlights those matters that are of greatest inmate concern. It may point out an individual officer or an isolated activity where corrective action may be needed. It serves, when run properly, to diffuse inmate resentment and hostility. It often lessens the number of lawsuits that are filed. When lawsuits *are* filed, it provides a quick record to attorneys and to the courts of what has been done already to address the complaint. It may provide a statistical basis, either grossly or precisely, to assess programs, policies, or activities that need more careful review and possible revision. It gives the corrections agency the chance to address its problems of management and operation and to correct them internally, without having the courts step in and order corrective action of the courts’ preference.

CRIPE, *supra* note 29 at 78.

Potential weaknesses of a grievance system are: (1) that money damages usually are not provided; (2) that injunctive relief usually is applied only in cases with an ongoing problem; (3) and that response to inmates’ grievances may take longer time than expected. *Id.*

123. *Wyatt*, 193 F.3d at 878.

124. *Id.*

125. *Id.*

claims and creates a record of the situation. When the administrative process fails to relieve a prisoner's claims, then the federal court who receives the prisoner's case will have a record of the situation to review in order to determine whether or not the case has merit.

The circuit courts remark that prisoners who seek only monetary relief are frustrated while working their way through a process that they foresee as providing them no benefit at all.¹²⁶ Yet, if the grievance procedures in place were to include money as an available remedy, the courts that are now opposed to the exhaustion requirement in cases where a prisoner seeks only monetary relief are likely to mandate that the prisoner exhaust the remedies.¹²⁷ Certainly, the courts cannot dictate that all prison grievance procedures include an option for monetary damages. Congress would have included such an option as part of the amendments of the PLRA. Nothing in the language of § 1997e suggests that Congress requires monetary damages to be available within administrative grievance procedures.¹²⁸ If all prisons do adopt a grievance procedure that includes monetary relief as one of its options, the circuits will likely resolve the split in their assessment of this issue.

While monetary relief is not an available administrative remedy in many prison administrative systems, the policy reasons behind the exhaustion requirement are more substantive and foundational than the policy reasons for allowing a prisoner to bypass the exhaustion requirement when the prisoner seeks only monetary relief.¹²⁹ Requiring exhaustion of administrative remedies furthers the intent of Congress when it enacted the PLRA, and it does not preclude prisoners who are denied relief by the prison to take their claims to federal court.¹³⁰

Congress' intent in requiring the exhaustion of administrative remedies was to drastically reduce the suits in federal courts brought by prisoners. Thus, allowing certain prisoners to bypass the exhaustion requirement by asking for monetary relief would run

126. *See supra* Part III.A.

127. *See discussion supra* Part III.A.

128. *See* 42 U.S.C. § 1997e (Supp. II 1996).

129. *See discussion supra* Part III.B.

130. 42 U.S.C. § 1997e(a) (Supp. II 1996).

counter to congressional intent. If prisoners are allowed to bypass the requirement as easily as it seems, then a reduction in prisoner lawsuits will not happen.

Even if the § 1997e exhaustion requirement is adopted as applying to all claims, whether they seek only monetary damages or not, there may still be debate over the interpretation of the term “available” in § 1997e. Some courts may interpret “available” to mean that any type of remedy in place will satisfy the definition, while other courts may interpret the word to mean “effective” for that particular prisoner’s claim. A case by case interpretation of what “available” means will lead to results as incongruous as the example discussed at the beginning of this Note. A bright-line rule, like the rule in *Nyhuis*, will be the most efficient way to administer § 1997e(a)’s mandate.¹³¹ As the court in *Nyhuis* held, a bright-line rule will give prisoners certainty about how their claims will be treated.¹³²

V. CONCLUSION

With the recent ruling in *Nyhuis*, a majority of the circuits that have addressed the debated issue of the exhaustion requirement in § 1997e and its application to claims for only monetary damages now endorse the position that § 1997e(a) applies to all civil rights claims, even where the administrative procedures in place do not provide for monetary damages. Of the three remaining circuits that still hold that § 1997e’s exhaustion requirement should not apply when a prisoner seeks only monetary relief and his prison grievance system does not provide for monetary damages, the Fifth Circuit¹³³ appears to be on the verge of reconsidering its position. The strong policy reasons for requiring § 1997e to apply to all prisoner civil rights actions, despite the remedy sought, give courts good reason to rule in favor of mandatory exhaustion for all prisoners’ civil rights claims. With consistent application of § 1997e to all claims, the administrative procedures will reduce the amount of cases that make their way to federal court, which is exactly why Congress enacted the PLRA. The

131. *Nyhuis v. Reno*, 204 F.3d 65, 75 (3d Cir. 2000).

132. *Id.*

133. *Wright v. Hollingsworth*, 201 F.3d 663 (5th Cir. 2000).

claims that then make it to federal court will be meritorious and could not be settled within the administrative system; this is the process hoped for by the PLRA.

